

EFFECTIVE AS A FINAL ORDER

DATE: 4/16/2019

FILED *BN*

MAR 21 2019

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

KS State Board of Healing Arts

In the Matter of

Docket No. 19-HA 00064

**Robin G. Simon-Mark, D.O.
Kansas License No. 05-40070**

SUMMARY ORDER

NOW ON THIS 21st day of March 2019, this matter comes before Kathleen Seizler Lippert, Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings pursuant to K.S.A. 77-537.

Pursuant to K.S.A 77-537 and K.S.A. 77-542, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within 15 days of service. Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

Findings of Fact

1. Robin G. Simon-Mark, D.O. ("Licensee") was issued License No. 05-40070 on June 9, 2017 and is and has been entitled to engage in the practice of osteopathic medicine in Kansas, having last renewed her license as Active on September 3, 2018.
2. Licensee's last known mailing address to the Board is: [REDACTED] Plantation, Florida 33325.
3. Licensee's license to practice osteopathic medicine in Kansas is currently Active.
4. During all times relevant to the facts set forth in this Summary Order, Licensee held an Active license to practice osteopathic medicine in Kansas.

5. On or about September 3, 2018, Licensee renewed her license online as Active. Licensee's renewal application stated that "As a condition of providing professional services in Kansas, whether or not physically located in Kansas, each person with an active license must pay the annual surcharge to the Kansas Health Care Stabilization Fund (KHCSF)." (emphasis in original). Licensee was asked "Have you paid the annual surcharge to the KHCSF?" to which she answered "no".

6. Additionally, on her renewal Licensee's continuing education year was listed as 2018. She answered the questions regarding her continuing education as follow:

Does your '**Education Year**' listed above indicate that you do not have continuing education hours due at this time? N[o]

Do you have at least 50 total hours of continuing education from 04-01-2017 through 09-30-2018? Y[es]

Do you have at least 100 total hours of continuing education from 04-01-2016 through 09-30-2018? Y[es]

Do you have at least 150 total hours of continuing education from 04-01-2015 through 09-30-2018? N[o]

(emphasis in original).

7. After renewing her license as Active, a search of the KHCSF showed Licensee was not in compliance.

8. On December 7, 2018, and January 11, 2019, the Board requested Licensee to provide proof of compliance with the Kansas Health Care Stabilization Fund ("KHCSF"), as required by K.S.A. 40-3404. The Board included instructions on how to contact KHCSF and warned that a

failure to provide proof of compliance may result in a fine or suspension of Licensee's license to practice osteopathic medicine in Kansas. Licensee was also requested to provide proof of Continuing Medical Education ("CME") requirements.

9. On or about February 1, 2019, after receiving no response to the December 7, 2018, and January 11, 2019 letters, the matter was referred to the Litigation Department.

10. On or about February 18, 2019, another search of the KHCSF showed Licensee was still not fund compliant.

11. On or about February 20, 2019, Board Deputy Litigation Counsel, Susan Gering, again requested Licensee to provide proof of compliance with KHCSF, with instructions on how to submit the proper forms for compliance. The deadline to submit the requested information was to March 6, 2019.

12. In the February 20th letter Licensee was also advised that she should submit the required CME.

13. On or about February 26, 2019, Licensee provided a copy of her CME hours showing that she was in compliance.

14. As of March 6, 2019, Licensee has failed to provide proof of compliance with KHCSF to the Board.

15. Licensee's has been out of compliance with the KHCSF since issuance of her license on June 9, 2017.

Applicable Law

16. Under the Kansas Healing Arts Act, K.S.A. 65-2809(c),

The board, prior to renewal of a license, shall require an active licensee to submit to the

board evidence satisfactory to the board that licensee is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402, and amendments there to, and has paid the premium surcharges as required by K.S.A. 40-3404, and amendments thereto.

17. K.S.A. 40-3402 states:

(a) A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per claim, subject to not less than a \$600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident health care provider as a condition of active licensure or other statutory authorization to render professional service as a health care provider in this state, unless such health care provider is a self-insurer. . .

(b) Unless a nonresident health care provider is a self-insurer, such health care provider shall not render professional service as a health care provider in this state unless such health care provider maintains coverage in effect as prescribed by subsection (a), except such coverage may be provided by a nonadmitted insurer who has filed the form required by subsection (b)(1). This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995.

(1) Every insurance company authorized to transact business in this state, that is authorized to issue professional liability insurance in any jurisdiction, shall file with the commissioner, as a condition of its continued transaction of business within this state, a form prescribed by the commissioner declaring that its professional liability insurance policies, wherever issued, shall be deemed to provide at least the insurance required by this subsection when the insured is rendering professional services as a nonresident health care provider in this state. Any nonadmitted insurer may file such a form.

(2) Every nonresident health care provider who is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404 and amendments thereto directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1). . .

18. K.S.A. 40-3404(b):

In the case of a resident health care provider who is not a self-insurer, the premium surcharge shall be collected in addition to the annual premium for the basic coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and amendments thereto. The amount of the premium surcharge shall be shown

separately on the policy or an endorsement thereto and shall be specifically identified as such. Such premium surcharge shall be due and payable by the insurer to the board of governors within 30 days after the annual premium for the basic coverage is received by the insurer. Within 15 days immediately following the effective date of this act, the board of governors shall send to each insurer information necessary for their compliance with this subsection. The certificate of authority of any insurer who fails to comply with the provisions of this subsection shall be suspended pursuant to K.S.A. 40-222, and amendments thereto, until such insurer shall pay the annual premium surcharge due and payable to the board of governors. In the case of a nonresident health care provider or a self-insurer, the premium surcharge shall be paid upon submitting documentation of compliance with K.S.A. 40-3402, and amendments thereto.

19. Under K.S.A. 65-2836, a license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions, upon a finding of the existence of any of the following grounds:

- (b) The licensee has committed an act of unprofessional or dishonorable conduct . . . as defined in K.S.A. 65-2837, and amendments thereto.
- (z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404.

Conclusions of Law

20. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

21. The Board finds that Licensee violated K.S.A. 65-2836(b), in that Licensee has committed unprofessional and/or dishonorable conduct in her failure to meet the requirements for KHCSF compliance in renewal, as set forth in K.S.A. 65-2809.

22. The Board finds that Licensee violated K.S.A. 65-2836(z), in that Licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404, and further required by K.S.A. 65-2809.

23. Based on the facts and circumstances set forth herein, the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law, and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons other than Licensee.

IT IS HEREBY ORDERED that Licensee is **INDEFINITELY SUSPENDED** until either Licensee changes her status from Active to Inactive or Exempt, or until such time she provides proof of payment of premium surcharges required under K.S.A. 40-3404.


IT IS FURTHER HEREBY ORDERED that Licensee is assessed a **CIVIL FINE** in the amount of **\$500.00** for violations of the Kansas Healing Arts Act. Such fine shall be paid to the “Kansas State Board of Healing Arts”, in full, on or before June 30, 2019. All monetary payments, which shall be in the form of check or money order, relating to this Summary Order shall be mailed to the Board certified and addressed to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612

PLEASE TAKE NOTICE that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 21st day of March 2019.

**KANSAS STATE BOARD
OF HEALING ARTS**


Kathleen Selzler Lippert
Executive Director

NOTICE OF RIGHTS
(Pursuant to K.S.A. 77-542)

Licensee is entitled to a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542 of the Kansas Administrative Procedure Act ("KAPA"). If Licensee desires a hearing, within 15 days from the date of service of this Order, Licensee must file a written request for a hearing with the office of the Executive Director at:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612

If Licensee requests a hearing, the Kansas State Board of Healing Arts will notify the Licensee of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing before commencement of the same. If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing pursuant to K.S.A. 77-542. Pursuant to K.S.A. 77-613(e), the Executive Director is the agency officer designated to receive service of petition for judicial review on behalf of the agency.

FINAL ORDER NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **FINAL ORDER** was served this 14th day of April, 2019 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Robin G. Simon-Mark, DO

[REDACTED]
Plantation, FL 33325
[REDACTED]

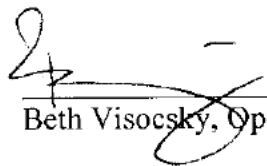
And a copy was hand-delivered to:

Susan Gering, Deputy Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Office of the General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director.



Beth Visocsky, Operations Manager